IN THE

SUPREME COURT OF THE UNITED STATES

No. 18A629

VIRGINIA HOUSE OF DELEGATES, et al.,

Applicants,

v.

GOLDEN BETHUNE-HILL, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF EMERGENCY APPLICATION FOR STAY PENDING RESOLUTION OF DIRECT APPEAL TO THIS COURT

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TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

Respondents offer no good reason for hastily replacing Virginia's bipartisan-supported and duly-enacted 2011 House of Delegates map with a professor-designed and court-ordered "remedial" map when this Court will soon be deciding whether the former even violates anyone's constitutional rights. Critically, Respondents never deny that staying the ongoing proceedings designed to fashion a remedy for the constitutional problems identified by the district court in the decision under review would not foreclose the possibility of holding the 2019 elections under a map that remedies the constitutional problems, if any, *identified by this Court* when it completes its review of the district court decision. Nor do they take issue with the alternative timeline the House has proposed for holding elections that would do just that, consistent with timelines for other recent Virginia elections. Instead, they adamantly insist that this Court should not worry about the indisputable harm and confusion that would result to the State, the House, and the people of Virginia if the district court completes the process of drawing maps that will immediately force the House to operate with divided constituencies and sow voter confusion because Respondents are confident that they will prevail before this Court.

Respondents' unflagging confidence is difficult to reconcile with the fact that this Court agreed to set this case for plenary consideration (rather than summarily affirm or dismiss for want of jurisdiction), or with the fact that this Court *upheld* the constitutionality of the only challenged majority-minority district as to which it definitively ruled in its first decision (or with the exhaustive dissenting opinion).

Moreover, Respondents' bullishness on their standing argument is difficult to reconcile with the attorney general's own representations to this Court last time around. *See* Letter from Stuart Raphael, Solicitor General of Virginia, to Denise McNerney, Merits Cases Clerk (Oct. 12, 2016) (Attachment A) (explaining that the state executive branch defendants "d[id] not draw the districts" and instead "merely implement elections," and thus, the House "will take the lead in this appeal in defending the redistricting litigation that they enacted"). Accordingly, there is certainly at least a "fair prospect" that this Court will reach the merits and then reach the same conclusion as to some or all of the remaining districts as it did with respect to HD75. In light of that reality, it simply makes no sense to immediately impose a new map that is premised on a complete affirmance from this Court and begin conducting elections before this Court can complete its review—particularly when Respondents do not and cannot deny that the election deadlines supposedly necessitating the hurried development of a court-ordered map can *and have* been extended in multiple past election cycles.

Implicitly recognizing as much, Respondents resort to blaming Applicants for "delaying" their stay request as they awaited this Court's decision whether to grant plenary consideration of the appeal and then sought to reach a non-litigious political resolution across the aisle. But exhausting alternatives to emergency relief from this Court is an exercise in prudence, not delay. Respondents also ominously warn that the "fundamental rights" of "tens of thousands" of Virginians hinge on the immediate adoption of districts designed by a college professor from California. Those

arguments might have more purchase (and less irony) if the only options were a court-ordered map reflecting the district court decision or elections under the duly enacted legislative map the district court found lacking. But since Respondents never deny that there is a third way—namely, maps drawn in time for the 2019 election and designed to conform to *this Court's* decision after plenary consideration—Respondents' rhetoric is just that. Indeed, if anything, commencing the election process under a court-ordered map that "reconfigures" some 15 to 20 districts (including some that have no independent defect, but are just collateral damage) when some or all of those changes may not withstand this Court's review is more likely to inflict injury than to remedy it. Moreover, it bears emphasis that the district court's proposed remedy is not a map free from the consideration of race by government actors. The question is not whether a government will consider race in configuring the challenged districts, but to what degree and by whom. There is much to be said for deferring any further consideration of race by government actors until this Court has spoken.

There is thus a far more sensible way to proceed. This Court should stay the remedial proceedings until it has had a chance to conduct its plenary review and issue an opinion, and free up the parties to focus on briefing and argument in this Court. If this Court ultimately concludes that Virginia's duly enacted map requires some changes, there will be sufficient time to implement them before the November elections, as Virginia's unique history of redistricting in election years confirms, and as Respondents never dispute in 50-plus pages of opposition.

I. The Court Has Agreed To Review This Case, And There Is A Fair Prospect That It Will Vacate Or Reverse The Decision Below.

Respondents start on the same wrong foot as they did in opposing Applicants' stay motion in the district court. They suggest that this Court's November 13 order agreeing to "hear[] ... the case on the merits" means that the Court is somehow *less* likely to review the case on the merits—and thus that Applicants are less likely to satisfy the first stay factor—because the order also requested the parties to brief whether Applicants have standing to appeal. *Va. House of Delegates v. Bethune-Hill*, No. 18-281, 2018 WL 4257757, at *1 (U.S. Nov. 13, 2018); *see also* Pls. Resp.12; AG Resp.9-10. But respondents do not explain why this Court would have set this case for plenary consideration had it already concluded that there is not even a "reasonable probability" that Applicants have standing to appeal. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). After all, if this Court were convinced that the party that litigated before it in this case two Terms ago lacked standing, it could have dismissed the appeal for want of jurisdiction, but it did not. Moreover, no one contends that the validity of the decision *below* is contingent on whether Applicants have standing. So if this Court were anywhere near as confident as Respondents that Applicants lack standing, it could have simply dismissed this appeal and left the decision below alone. In reality, then, this Court's request that the parties brief standing is readily explained by the rule that the Court "has a special obligation to 'satisfy itself ... of its own jurisdiction'" in every case. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986).

While Respondents suggest that this Court cannot issue a stay without definitely resolving that jurisdictional question, this Court routinely grants stays even where it has "postpone[d]" a question about its own jurisdiction. Indeed, the Court did so just this past year. *See Abbott v. Perez*, 138 S. Ct. 735, 735 (2018) ("Further consideration of the questions of jurisdiction is postponed to the hearing of the case on the merits."); *Abbott v. Perez*, 138 S. Ct. 49, 49 (2017) ("it is ordered that the order of the United States District Court for the Western District of Texas ... is stayed pending the timely filing and disposition of an appeal to this Court"). That same approach is equally warranted here. Indeed, denying a stay just before the district court adopts a "remedial" map and just before the Court "hear[s] ... the case on the merits" will only fuel speculation that the Court has already made up its mind, which will only cause further confusion as voters and candidates in Virginia prepare for next year's House elections.

Instead of confronting that reality, Respondents merely "recycle" the same standing arguments that failed to convince this Court to summarily dispose of this case last month. AG Resp.10. For example, plaintiffs try to liken this case to *Wittman v. Personhuballah*, 136 S. Ct. 998, 998 (2016), where the Court denied a stay application filed by individual congressmen in a case involving an injunction against the use of a single congressional district in Virginia. Pls. Resp.12. But the *Wittman* applicants did not live in or represent that challenged district, let alone serve in the legislative body (the Virginia General Assembly) that designed and enacted it. *See Wittman v. Personhuballah*, 136 S. Ct. 1732, 1737 (2016). Needless to say, *Wittman*

is a far cry from this case, which involves the legislative body that drew the challenged districts pursuant to its constitutionally enshrined authority to draw House districts. *See* Va. Const. art. II, §6.

Plaintiffs next suggest that, in light of "the State Defendants' decision not to appeal, this case has 'lost the essential elements of a justiciable controversy.'" Pls. Resp.13. But this "controversy" is about the constitutionality of the 2011 House map, which was designed by the House and continues to govern the very constitution of the body, and the executive branch defendants have expressly—and repeatedly—disclaimed any interest in that issue. Indeed, in a letter to this Court in this case on behalf of the Virginia attorney general two years ago, Virginia's solicitor general explained that he would not file a brief on the merits because the state defendants "d[id] not draw the districts" and instead "merely implement elections"; thus, the solicitor general continued, the House "will take the lead in this appeal in defending the redistricting litigation that they enacted." Letter from Stuart Raphael, Solicitor General of Virginia, to Denise McNerney, Merits Cases Clerk (Oct. 12, 2016) (Attachment A); *see also* ECF No. 147 (explaining that state defendants are limited to answering "questions about the effect that a particular ruling may have on their operations or on the administration of elections"). If the state defendants lacked the requisite interest in the issue to take a position on the merits last time around, it is hard to see how their decision not to appeal this time around can suddenly strip this case of the "essential elements of a justiciable controversy."

In short, this Court's precedent makes clear—and the district court below plainly agreed—that the House can at least "reasonabl[y]" claim to have suffered Article III injury from a court order that strikes down numerous duly enacted House districts that were designed by the House and passed by the House, and that purports to reassign the House's constitutional authority to design new House districts to a political science professor who lives 3,000 miles away. *See, e.g.*, *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n (AIRC)*, 135 S. Ct. 2652, 2665 (2015); *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 194 (1972); *Coleman v. Miller*, 307 U.S. 433, 438 (1939). That injury works a "fundamental change[] to the composition of the legislative body [and] its areas of responsibility and authority." Pls. Resp.16 n.5. Indeed, once the district court issues a remedial map to govern the 2019 elections, members of the House will labor under divided constituencies—the one they currently represent under the 2011 map and the one in which they would run for re-election—with immediate impacts on the work of the House. But even apart from the distinct injuries to the House, the House has standing because it has authority under state law to vindicate the constitutionality of the 2011 map. *See Karcher v. May*, 484 U.S. 72, 75, 81-82 (1987); *Vesilind v. Va. State Bd. of Elections*, 813 S.E.2d 739, 742 (Va. 2018). And if nothing else, the House certainly has made a sufficient showing to seek relief that would merely maintain the status quo—*i.e.*, a House map that has governed for four straight election cycles—while this Court considers both standing

and the merits. Indeed, plaintiffs never suggest otherwise, and the attorney general devotes just two sentences to half-heartedly fighting the relevant status quo.[1]

Respondents' suggestion that there is not even a "fair prospect" that a majority of the Court will vote to reverse the decision below on the merits, either in whole or in part, suffers from many of the same flaws. *Hollingsworth*, 558 U.S. at 190. Again, that much is clear from this Court's decision to set this case for a hearing on the merits, rather than summarily reverse, as well as from the fact that this Court has already upheld the constitutionality of the only challenged majority-minority House district as to which it reached the merits (HD75). *See Bethune-Hill v. Va. State Bd. of Elections (Bethune-Hill II)*, 137 S. Ct. 788, 800-02 (2017).

The attorney general has little to say in response to any of that, presumably because the state defendants—which, again, are just "administrative agencies that implement elections," JS.App.208—"piggyback[ed]" on the House's defense on the merits for the past four years. AG Resp.12; *see also* JS.App.7. Plaintiffs, for their part, "most assuredly" insist that the Court will strike down all 11 remaining challenged districts on the merits as unconstitutional racial gerrymanders, because racial considerations—*viz.*, targeting a threshold black voting-age population (BVAP)

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[1] The first of those sentences—which relies on a case involving a federal defendant—says that "the current status quo is that the district court's decision is 'presumptive[ly] correct.'" AG Resp.10 (quoting *Conforte v. Comm'r of Internal Revenue*, 459 U.S. 1309, 1311 n.1 (1983) (Rehnquist, J., in chambers)). In fact, "[w]hen courts declare state laws unconstitutional and enjoin state officials from enforcing them, [this Court's] ordinary practice is to suspend those injunctions from taking effect pending appellate review," restoring the status quo ante. *Strange v. Searcy*, 135 S. Ct. 940, 940 (2015) (Thomas, J., dissenting). The second sentence says that the House is asking the Court to impermissibly "*assume*" that the House has standing. AG Resp.10-11. But if resolving a threshold jurisdictional question before acting on a stay request were necessary, this Court could never grant stays in redistricting cases where the Court has "postponed" the jurisdictional question, and yet the Court consistently does just that.

of 55% in pre-existing majority-minority districts—purportedly predominated in the design of each of them, and the legislature supposedly had no good reason for utilizing that target in any of them. Pls. Resp.19. Plaintiffs' arguments are most assuredly incorrect.

Plaintiffs begin by faulting Applicants for "spend[ing] a scant three pages addressing predominance" and highlighting only one challenged district. Pls. Resp.20. But as plaintiffs astutely observe, this Court has already reviewed the predominance question in "considerable detail" at the jurisdictional stage, Pls. Resp.19, and concluded that the case merited plenary consideration. There is thus no need to wax at length about the merits at this point; it is enough to show there is at least a "fair prospect" that this Court would reverse as to even a single district, as such a result would require creating yet another remedial map in just a few short months. And as Judge Payne's exhaustive 95-page dissent underscores, there are substantial flaws with the district court's predominance analysis in *every* district. JS.App.124-201.

As Applicants have explained, this Court need only look to HD92 to see those flaws, as the majority below inexplicably concluded that the 55% BVAP target dominated and controlled the design of that district even though it started with a 62.1% BVAP, finished with a 60.7% BVAP, and improved as a matter of traditional districting principles in the process—as even the majority below conceded. JS.App.62-64. Moreover, even plaintiffs have agreed that HD92 (and every other district challenged here) should remain a "healthy performing majority-minority

district[]." ECF No. 102 at 818. Plaintiffs thus have little to offer in defense of HD92, and spend a scant page-and-a-half quibbling with Applicants' arguments. They insist, for example, that "the most natural way to draw [HD92] was to expand [it] 'into heavily white precincts." Pls. Resp.26. But something is plainly amiss when the "most natural way" to draw a district is one that would prevent the legislature from improving the district as a matter of traditional districting criteria. In short, if this Court were to affirm the district court's predominance finding as to HD92, it would be the first time "to date" that this Court has done so without "evidence that some district lines deviated from traditional principles." *Bethune-Hill II*, 137 S. Ct. at 799. There is at least a "fair prospect" that Applicants will win that battle on the merits—just as there is a fair prospect that the district court's reasoning will not withstand this Court's review in any other district.

In all events, this Court need not even decide the predominance question in HD92 or anywhere else to uphold the bipartisan-supported districts here because this Court can reverse on the ground that they would satisfy strict scrutiny regardless, just as the Court did two Terms ago with HD75, a district that the author of the majority opinion below notably would have struck down as an unconstitutional racial gerrymander after the first trial. *See* JS.App.354 (Keenan, J., dissenting) ("Jones failed to provide any explanation of how his 'functional' review led him to conclude that a 55% BVAP was required in District 75 to ensure compliance with the [Voting Rights Act]."). To start, as with HD75, "[t]he parties agree that the [11] districts at issue here, where minorities had constituted a majority of the voting-age population

for many past elections, qualified as 'ability-to-elect' districts," and thus the legislature had an obligation under §5 of the Voting Rights Act to ensure that black voters would continue to maintain their ability to elect their preferred candidates of choice. *Bethune-Hill II*, 137 S. Ct. at 795. And two Terms ago, this Court concluded that the legislature had "good reasons" to utilize a 55% BVAP target to avoid retrogression in HD75 because, for example, Delegate Chris Jones—the primary architect of the 2011 plan, whose testimony was fully credited two years ago—repeatedly met with the incumbent delegate from HD75, as well as with delegates from other majority-minority districts before settling on a 55% BVAP target; he considered results and turnout rates in recent elections; and plaintiffs had never disputed that racially polarized voting occurs. *Id.* at 800-02. Similar reasons support the use of a 55% BVAP target in every other majority-minority district.

Plaintiffs contend otherwise only by falsely insisting that the House failed to "engage[] in an analysis of *any* kind" with respect to the 11 remaining districts. Pls. Resp.29. But even a mildly serious "holistic" analysis belies that claim. *Bethune-Hill II*, 137 S. Ct. at 800. As with HD75, Delegate Jones and members of his redistricting committee repeatedly met with members of the 11 other challenged districts; they reviewed available election results and contested primary data; and they faced the same "difficult task[]" in redrawing those districts given the compressed time table and sheer lack of other critical data, such as proof of racially polarized voting, that might have justified a sub-50% BVAP. *Id.* at 801; *see also, e.g.*, ECF No. 100 at 2343; ECF No. 101 at 2365. Plaintiffs simply ignore that evidence and brush aside the

"significant time constraints" and the "limited data," insisting that the citizen-legislature should have done much more before preserving decades-old majority-minority districts that all agree should remain ability-to-elect districts. Pls. Resp.31. That is exactly the approach this Court rejected in HD75. As the Court explained *to these same plaintiffs* two years ago, they simply "ask too much from state officials charged with the sensitive duty of reapportioning legislative districts." *Bethune-Hill II*, 137 S. Ct. at 802. That plaintiffs have repeated those same mistakes—and that the district court has now embraced them—confirms that there is a "fair prospect" that a majority of this Court will reverse the district court's strict scrutiny analysis as to at least as to some, if not all, of the challenged districts.

II. Virginia And Its Citizens Will Suffer Irreparable Harm Absent A Stay, And The Balance Of Equities Favors A Stay.

Respondents have no coherent explanation for why the same irreparable harm this Court has identified in other redistricting cases does not exist here. As this Court stated just six months ago, "the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State," *Abbott*, 138 S. Ct. at 2234 n.17, as injunctions against such maps block legislation "enacted by representatives of its people," *Maryland v. King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers). The district court's judgment here inflicts exactly that irreparable harm and then some, as the court ultimately transferred the House's constitutional redistricting authority (at least for the 2019 House elections) to an unelected special master. *See* JS.App.203; ECF No. 276.

Worse still, the district court did not transfer that authority to a special master with instructions to draw a map that was *less* conscious of race. The special master has instead proposed districts that unquestionably are crafted to target a particular BVAP; they just target a BVAP preferred by the special master, instead of the 55% threshold that the legislature preferred. The choice as this juncture thus is not between a race-conscious map and race-neutral one; it is simply a choice between whether the legislature or a professor from California should decide how best to take race into account to comply with the obligations of now-defunct §5 of the VRA (and whether former should do so before this Court has even decided whether there is a constitutional problem to remedy). Whatever this Court may decide in this case, it is hard to imagine that the Court will conclude that the special master's solution—which appears to convert the legislature's 55% BVAP *floor* into a 55% BVAP *ceiling*—is the solution to the thorny constitutional complications that §5 engendered. Nor is it obvious that the values of the Equal Protection Clause will be served by having another set of government officials (perhaps needlessly) take race into account in configuring the districts at issue. The House at least had the justification of needing to comply with §5, while the special master and district court will have no excuse for their race-conscious government action if this Court reverses, even in part.

Respondents resist the straightforward conclusion that supplanting a duly enacted map with a court-drawn map will cause irreparable injury only by complaining about who has the power to assert which injuries. AG Resp.1. But there is simply no denying that the State, the House, and Virginia voters all suffer

immediate injuries if the district court goes forward and issues its maps and all would be further injured if they were deprived of the ability to hold the 2019 elections under a map that does not actually suffer from any constitutional deficiency. *See, e.g.*, *Karcher v. Daggett*, 455 U.S. 1303 (1982) (staying order enjoining redistricting map in case brought, *inter alia*, by Speaker of New Jersey General Assembly and without support from state executive branch).

Plaintiffs, for their part, insist that "[t]here is no doubt that granting the requested stay would cause irreparable injury to Respondents" and "tens of thousands of other residents of the challenged districts." Pls. Resp.32 (capitalization removed). But setting aside the fair prospect that this Court will reverse in whole or in part, that is simply not the case. Plaintiffs' argument assumes that the 2019 election deadlines purportedly necessitating the immediate imposition of a new map—such as the March 2019 candidate-qualification deadlines and the June 2019 primaries—*must* remain in place for orderly elections to proceed in November 2019. But as Applicants have explained in great detail (and Respondents never contest), those assumptions are mistaken. Virginia has routinely delayed election deadlines in past election cycles, with primaries being held as late as the September before a November election. *See, e.g.*, HB 1536 (April 9, 2000) (resetting primaries and nominating events from June 12, 2001 to September 11, 2001); *see also* HB 1507 (Feb. 17, 2011) (resetting primaries and nominating events from June 14, 2011 to August 23, 2011). And it has done so without suffering any adverse effects on the elections themselves. Thus, even if this Court were to release a decision late next spring—and

even if that decision were to require tweaks to certain districts—there would still be plenty of time to implement that guidance before the elections.

Tellingly, Respondents never deny any of this. They do not and cannot dispute that Virginia has held successful elections even in years when election deadlines have been extended by many months to accommodate redistricting. They never suggest that the delays to the election deadlines that the House has proposed for the 2019 cycle—with candidate-qualification deadlines in mid-to-late July 2019 and primaries in September 2019—are unworkable. Nor do they deny that the district court has equitable power to delay those deadlines. For good reason: Both Respondents have already *conceded* that the district court (which has never articulated any objection to resetting the election deadlines and left open the possibility to doing just that by denying Applicants' stay motion without prejudice) has precisely that authority. *See* ECF No. 319 at 4 ("Defendants agree that federal courts may ... modify state election dates when necessary to remedy constitutional violations and vindicate federal rights."); ECF No. 320 at 12 ("Plaintiffs obviously agree that the Court has equitable authority to alter election deadlines[.]").

Against that background, it makes no sense whatsoever to rush the creation of an entirely new map that "reconfigures" some 25% of all House districts by employing the BVAP target preferred by a professor from California when all of that work may soon be for naught. JS.App.203; ECF No. 323 at 5. That is especially true in light of the immediate negative real-world consequences on the House, candidates, and voters in what everyone agrees is a critical election year. Pls. Resp.6 (noting that the

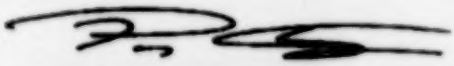
2019 election is the last election before the next regularly scheduled House redistricting cycle); AG Resp.2 (same). If the district court issues its "remedial" map, over a quarter of the Delegates will immediately be saddled with divided constituencies with immediate negative impacts on the work of the House. Moreover, as Applicants have explained, and as common sense bears out, replacing a map that has governed the last four election cycles with a second map only to switch back to the first map (or to a third map) is bound to cause confusion among candidates and voters. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls."). Once again, Respondents hardly suggest otherwise. Instead, they just repeat their refrain that the House "has no ability [] to speak on behalf of anyone other than itself," AG Resp.12-13, whether about "potential voter confusion" or seemingly anything else, Pls. Resp.35. But even setting aside Respondents' remarkable attempts to muzzle the House, this Court's stay analysis requires consideration of the "public interest," and allows the parties to make arguments about the public interest even when they do not represent the public. In this case, consideration of the "public interest" obviously demands consideration of the candidates and voters who will participate in the 2019 elections. *See, e.g., Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J.) (citing "the interests of the public at large" as an element of the stay analysis). Indeed, that is presumably why plaintiffs invoke the interests of "tens of thousands" of voters that have never been parties to this case. Pls. Resp.32.

Perhaps sensing that their positions are unreasonable, Respondents ultimately try to lay the blame on Applicants, insisting that the House's application should be denied because of the House's purported "tardiness in seeking a stay from this Court." AG Resp.16; Pls. Resp.35. But exhausting alternatives to enlisting this Court's power to issue emergency relief reflects prudence, not tardiness. It was not until October that the Governor announced that he would not sign any new map passed by the General Assembly, thus resulting in the appointment of a college professor to design a "remedial" map. *See* ECF Nso. 275-1, 276. It was not until November 13 that this Court decided to hear this case on the merits, which provided the clearest signal that continuing with the remedial proceedings made no sense. *See Va. House of Delegates*, 2018 WL 4257757, at *1. And it was not until November 28—the very same day the House filed its stay motion in the district court—that the Governor finally communicated his unwillingness to negotiate a political solution for delaying the election deadlines. ECF Nos. 310, 311. That the House tried to reach a bipartisan out-of-court solution does not "blunt[] [the] claim of urgency." AG Resp.16. It just underscores that the House having prudently exhausted all reasonable alternatives, a stay from this Court is now the only way to move forward in this litigation in a sensible manner.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that this Court grant this emergency application for a stay of the district court's order pending resolution of Applicants' direct appeal of that order.

Respectfully submitted,



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ATTACHMENT A

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Re: *Bethune-Hill, et al. v. Virginia State Board of Elections, et al.*, No. 15-680

Dear Ms. McNerney:

I write to notify the Court that Defendants-Appellees—the Virginia State Board of Elections, Chairman James B. Alcorn, Vice-Chair Clara Belle Wheeler, Secretary Singleton B. McAllister, the Virginia Department of Elections, and Commissioner Edgardo Cortés—will not be filing a brief in this appeal.

The district court noted that, because these parties merely "implement elections but do not draw the districts, the Defendants allowed the [Intervenors-Appellees, the Virginia House of Delegates and Speaker William J. Howell] to carry the burden of litigation but joined the Intervenors' arguments at the close of the case." J.S. App. 5a (citations and quotations omitted). As in the district court, Defendants-Appellees are monitoring the case closely, but to avoid unnecessary duplication of expense to Virginia taxpayers, Intervenors-Appellees will take the lead in this appeal in defending the redistricting legislation that they enacted.

Respectfully yours,

Stuart A. Raphael
Solicitor General of Virginia
Counsel of record for Defendants-Appellees

cc: Counsel of record

IN THE SUPREME COURT OF THE UNITED STATES

GOLDEN BETHUNE-HILL, ET AL.,

Appellants,

v.

VIRGINIA STATE BOARD OF ELECTIONS, ET AL.

Appellees.

No. 15-680

CERTIFICATE OF SERVICE

I, Stuart A. Raphael, counsel for Defendants-Appellees and a member of the Bar of this Court, certify that on this 12th day of October, 2016, I caused a copy of this letter to be mailed by First Class United States Mail to the following:

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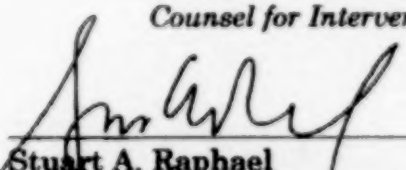
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